

HARBINGERTM

Updates on regulatory changes affecting your business

August 2016



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COMPANY LAW

Companies (Cost Records and Audit) Amendment Rules, 2016

The Ministry of Corporate Affairs has introduced the Companies (Cost Records and Audit) Rules, 2016 on July 14, 2016. These rules will be effective from the date of their publication in the Official Gazette.

Notification dated July 14, 2016

Companies (Share Capital and Debentures) Third Amendment Rules, 2016

The Ministry of Corporate Affairs has amended the Companies (Share Capital and Debentures) Rules, 2014. The Amendment Rules shall come into force from the date of their publication in the Official Gazette.

Following are the amendments made by the Rules:

- Company may issue equity shares with differential rights after expiry of 5 years from the end of the financial year in which default was made good
- A start-up company can issue sweat equity shares not exceeding 50% of its paid up capital upto 5 years from date of its incorporation or registration

- If a company intends to redeem its debentures prematurely it must transfer to Debenture Redemption Reserve such amount which is required to redeem the debentures even if it exceeds the specified limits

Notification dated July 19, 2016

Introduction of National Company Law Tribunal Rules, 2016

The Central Government has issued the National Company Law Tribunal Rules, 2016. These rules shall come into effect from the date of their publication in the Official Gazette.

Matters, proceedings or cases before the Company Law Tribunal will now be transferred to the National Company Law Tribunal (NCLT).

The Rules state general powers, functions and rules of the NCLT and its authorities as well as procedure for appeals, petitions and proceedings.

Notification dated July 21, 2016

Introduction of National Company Law Appellate Tribunal Rules, 2016

The Central Government has introduced the National Company Law Appellate Tribunal Rules, 2016 with effect from date of publication in the Official Gazette.

The Rules state the general rules relating to the functioning of the Appellate Tribunal, powers of the Registrar and procedure for appeals.

Notification dated July 21, 2016

Amendments in Rules related to Incorporation

Key highlights of the amendments are as under:

- a. A natural person may be a member of a One Person Company (OPC). Such person may also be a nominee in one other One Person Company. However if the person becomes a member in another OPC by being a nominee in that company, then he shall convert the one person company into a private/public company within 180 days.
- b. Following changes are made in the incorporation process:
 - Proof of identity and residence of the Subscriber will not be required to be filed with ROC at the time of filling application incorporation of the Company, if the subscriber is holding a valid DIN
 - Requirement of INC-10 has been dispensed
- c. Partnership firm cannot be a subscriber to the Memorandum
- d. Every company which has a

website for conducting online business shall disclose/publish its name, address of registered office, the Corporate Identity Number, telephone number, email and name of person who may be contacted in case of queries or grievances.

- e. Changes in respect of shifting of registered office
 - Requirement of submitting copy of application to SEBI, in case of listed companies has been omitted
 - In case of companies against whom inquiry or prosecution is pending, shifting of registered office of Company from jurisdiction of one ROC to jurisdiction of another ROC, within the same state will be allowed on completion of such inquiry, inspection or investigation, if any, as a consequence of which no prosecution is pending

Notification dated July 27, 2016

Amendments in Rules related to Accounts chapter

Highlights of the amendments are as under:

1. Requirement of consolidation

has been dispensed for a company which meets the following conditions:

- a. Is a wholly owned subsidiary, or partially-owned subsidiary of another company and all its other members, including those not entitled to vote, having been intimated in writing and for which proof of delivery of such intimation is available, do not object to the company not presenting consolidated financial statements
 - b. It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India and
 - c. Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which comply with the Accounting Standards
2. Subsequent to the change in requirement, format of Form AOC-1 has been revised
 3. Body corporate can also be appointed as an internal auditor. Chartered Accountant or Cost Account

who are not in practice can be appointed as internal auditor

4. New format of Form AOC-4 has been provided

Notification dated July 27, 2016

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INCOME TAX

Applicability of Income Computation and Disclosure Standards (ICDS)

Expert Committee was formed to examine ICDS in view of various representations. Considering the fact that it will necessitate amendments in Tax audit Report, applicability of ICDS is postponed to from April 1, 2016.

Press Release dated July 6, 2016

Relaxation of time for making payments under The Income Declaration Scheme, 2016

The Government has decided to revise the time schedule for making payments under the Scheme as under:

- Minimum 25% of tax, surcharge and penalty to be paid by November 30, 2016
- Further 25% of tax, surcharge and penalty to be paid by March 31, 2017
- Balance to be paid on or before September 30, 2017

Press Release Dated July 14, 2016

Clarifications on the Income Declaration Scheme, 2016

The Board has issued FAQs on the Income Declaration Scheme to address the doubts and concerns of the stakeholders.

Notification No. 27/2016 dated June 17, 2016

Definition of Arm's Length Price

If the Arm's Length Price as per Section 92C and the price at which the international transaction or domestic transaction has actually occurred does not exceed 1% of the transaction price in case of wholesale trading and 3% in other cases, the price at which the international or domestic transaction has occurred shall be arm's length price for Assessment Year 2016-2017.

Wholesale trading means an international transaction or specified domestic transaction in which -

- Purchase cost is 80% or more of the total cost pertaining to such activity and
- Average monthly closing inventory of such goods is 10% or less of sales related to such activity

Notification Number 57/2016 dated July 14,

2016

Government to allot PAN and TAN in one day through paperless hassle free process

Government has enabled filing of PAN and TAN application via digital signature certificates on the portals of PAN Service Providers. Under this process, new PAN and TAN will be allotted to companies within one day after completion of valid application.

Taxmann.com

Relaxation of addition fees and extension of last date in filing AOC-4, AOC-4 (XBRL), AOC-4 (CFS) and MGT-7 under the Companies Act, 2013

The Ministry has revised form AOC-4 which will be released shortly. Form AOC-4 (XBRL) and Form AOC-4 (CFS) are also being revised and will be released by end of August.

It has been decided to allow companies to file financial statements and Annual Returns on or before 29 October, 2016 where due date for holding Annual General Meeting is on or after 1 April, 2016, without payment of additional fee.

General Circular No. 08/2016 dated July 29, 2016

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ECONOMICS

Government assesses impact of Brexit on Indian Economy

India has not only avoided adverse impacts, but it has emerged as a safe haven for investors around the world.

The Rupee depreciated against the US Dollar by around 1% for one day post the decision of Brexit whereas many markets depreciated for days.

As a part of the global economy, India will be affected if there is slowdown in the UK and European Union (EU) following Brexit. India's exports in goods to the UK and EU have been around 3% and 17% of India's total exports. India exports approximately \$10 billion in software to UK and European Union. India's exports to both UK and Europe have been decreasing in the past two years due to low demand. The global growth for 2016 has been revised from 3.2% to 3.1% after Brexit.

The impact of Brexit on trade would depend on trade negotiations that will determine India's future market access to these countries.

The Government and RBI are closely monitoring the situation. The strong forex reserves can provide a buffer against volatility in the domestic forex market.

How GST will change the way business is done in India

India will adopt a dual GST model which includes taxes at the central and state level. There will be a CGST and SGST (intra-state supply) and IGST (inter-state supply). The shift from the current structure will be from an origin based taxation system to a destination based system. This will require businesses to make changes in their operations.

Currently many industries operate at a state warehouse model since stock transfer will result in CST not subject to credit. Under GST, inter-state sales will be subject to creditable GST. Many businesses may consider moving to a single warehouse model to reduce costs. This will increase business in centrally located areas to implement the single warehouse model.

As per the current law, VAT credit is limited to a specific state and CENVAT credit is centralised. Cross utilisation isn't possible. Under GST, state wise credit will need to be maintained with no cross utilisation between CGST and SGST. GST cost will be significant for businesses.

The effects of GST will be felt in all areas of business – supply chain, ERP system, working capital management, processes, pricing, human resource. It is important that India becomes ready to align their structure and operations in the new GST law.

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Financialexpress.com

SUMMARY OF IMPORTANT JUDGMENTS:

A. Income Tax

Sr. No	Tribunal/ Court	Section/ Area	Nature	Case Law
1	Mumbai Tribunal	Section 11	Profit earned by pharmacy shop in charitable hospital is exempt	Hiranandani Foundation vs. ADIT, Mumbai
2	Vishakhapatnam Tribunal	Section 40(a)(ia)	When Section 11 exemption is claimed no disallowance u/s 40(a)(ia)	Sri Koundinya Educational Society vs. ACIT, Rajahmundry
3	Kolkata Tribunal	Section 40A(3)	Cash payments greater than 20,000 to liquor dealers to maintain stock does not attract disallowance	Prabir Kumar Mullick vs. ITO, Asansol
4	Mumbai Tribunal	Section 54F	No denial of Section 54F relief if taxpayer is unable to get possession of flat due to fault of builder	Rajeev B. Shah vs. ITO, Mumbai
5	Amritsar Tribunal	Section 68	Cash deposits in bank cannot be considered as undisclosed income without verifying source of such deposits	Gurpal Singh vs. ITO, Kapurthala
6	Chandigarh Tribunal	Section 69C	No unexplained expenditure permitted when assessee is under presumptive scheme.	Nand Lal Popli vs. DCIT, Chandigarh

B. Service Tax

Sr. No	Tribunal/ Court	Section/ Area	Nature	Case Law
1	Mumbai CESTAT	Cenvat Credit	Destruction of invoices in fire will not lead to denial of credit if all transactions are recorded in ledger	Commissioner of Service Tax, Mumbai vs. Kaycee Finance Services Ltd.
2	Bangalore - CESTAT	Service Tax	Prize money paid to service provider for good performance isn't liable to service tax	AMR India Ltd. Vs. Commissioner of

				Central Excise, Hyderabad
3	Gujarat	Service Tax	No garnishee proceedings against service recipient if it didn't owe anything to service provider	Food Corporation of India vs. Union of India

C. Companies Act

Sr. No	Tribunal/ Court	Section/ Area	Nature	Case Law
1	NCLT – New Delhi	Companies Act	Directors can attend board meeting via video conferencing without intimating at beginning of calendar year	Rupak Gupta vs. U.P. Hotels Ltd.

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DISCUSSION ON JUDGEMENTS



A. INCOME TAX

1. Profit earned by pharmacy shop in charitable hospital is exempt

In re-assessment the Assessing Officer (AO) segregated the profits out of pharmacy shop. The AO stated that since separate books of accounts were not maintained for pharmacy exemption would not be permitted.

When books of accounts for pharmacy are not maintained, it would result into disallowance of profits related to such shop.

The CIT (A) gave decision in favour of the revenue.

The Tribunal held in favour of the assessee – it is not possible to run a hospital without a pharmacy shop in its premises.

Thus, it is an integral part of the hospital and would be eligible for exemption.

2. Provisions of disallowance of expenditure for non - deduction of TDS are not applicable when income is computed for charitable trust

The ITAT held that - Section 40(a) (ia) deals with computation of profits and gains from business and profession.

Therefore, the provisions of Section 40(a)(ia) are relevant if income is computed under the head “profits and gains of business and profession.” Computation of income under Section 11 is real income concept computed on principles of real income from property held under trust and not notional income.

Section 11 provides for application of income for charitable purposes. Application of income arises only when income is available. If expenditure is disallowed, it leads to a situation where assessee’s income is enhanced without there being any real income for charitable purpose. Therefore, when income of a charitable trust is calculated under Section 11, the provisions of Section 40(a) (ia) are not applicable.

3. Cash payments made to assessee in excess of prescribed limit in order to maintain stock of liquor as per Excise Department will not attract disallowance

Assessee made cash purchases from two parties. Since the payments

exceeded Rs. 20,000, the Assessing Officer disallowed the purchases. Commissioner (Appeals) upheld the disallowance.

The Tribunal held that – the assessee was the only authorised dealer in the area for supply of country liquor to Excise vendors. The assessee was to keep stock as prescribed by the Department. In case stock fell below the limit, penalty would be imposed.

The vendors would not accept account payee cheque from the assessee as it would take time to clear.

Therefore, the transaction in Cash in these circumstances will not suffer disallowance.

4. Section 54F relief will not be disallowed if taxpayer is unable to obtain possession of flat due to builder's fault

The ITAT held that – the assessee invested amount in purchase of residential house within the period prescribed under Section 54F. It was not the assessee's responsibility to get the flat completed or registered in his name.

The assessee had invested the entire sales consideration of land by purchasing the flat. The construction of the flat could not be completed in spite of the fact that obligation of Assessee was complete.

It was therefore not possible for the assessee to take possession of the flat and get it registered in its name. This cannot be a reason for denying deduction to the assessee. Hence, the deduction should be allowed to the assessee.

5. Cash deposits cannot be considered as undisclosed income without verifying source

The assessee had a savings bank account in which it deposited cash. He did not file return of income.

The Assessing Officer (AO) wrote an inquiry letter to the assessee to verify the source of the cash deposit. The assessee failed to respond to the inquiry letter. The AO formed a belief it was income which escaped assessment.

The AO completed the assessment by adding undisclosed cash deposit in bank account of the assessee along with undisclosed interest. The CIT (A) upheld the decision.

Upon appeal the Tribunal held that – at the time the letter of inquiry was issued proceedings were not pending, hence such letter is not valid in the eyes of the law.

In absence of the response to the letter, AO could not form a belief of income escaping assessment.

The Assessing Officer proceeded on the assumption that bank deposits

included undisclosed income. The AO overlooked the fact that deposits need not be income of the assessee. All proceedings against the assessee were cancelled.

6. Section 69C additions when assessee is under presumptive tax scheme

The assessee, a civil contractor, and is under the presumptive scheme. The Assessing Officer (AO) made additions for unexplained expenditure.

The assessee argued that the AO could not change the profits as per presumptive tax. The CIT (Appeals) agreed with the judgement of Assessing Officer.

Upon appeal to ITAT it was held that - the provisions of section 44AD are quite clear that in case of a business based on gross receipts/turnover the income under the head profits and gains of business will be deemed to be @ 8% or any higher amount.

If 8% of gross receipts are deemed income of the assessee then remaining 92% would be deemed expenditure. Meaning actual expenditure might not be 92% of gross receipts, only for taxation purpose, it is considered so.

The AO had started with the presumption that 92% of the gross receipts were the expenditure incurred by the assessee. If the income is itself estimated, the expenditure could not have been "actually" incurred.

The assessee had not incurred expense to the extent of 92% of gross receipts. Therefore, Section 69C could not be applied. Asking the assessee to prove expenditure to the extent of 92% would defeat the purpose of presumptive taxation.

B. SERVICE TAX

1. Purchase invoices have been destroyed in fire, but if all transactions are recorded in ledger and books of accounts and payments have been made, CENVAT credit cannot be denied

During audit, the auditors observed that original invoices were not available. The assessee stated that original invoices were destroyed by fire.

The Department argued that CENVAT credit could not be availed as original invoices were not submitted for verification. The Authority demanded interest and penalty. The assessee appealed which was permitted. The revenue filed instant appeal.

The CESTAT held - even though invoices were destroyed by fire but if transactions were recorded in ledger and books of accounts the credit could not be denied. The assessee could not have recorded invoices unless they were physically available.

2. Garnishee proceedings cannot be initiated against service recipient, if service recipient did not owe anything to service provider

Food Corporation of India (FCI) engaged Kailash Enterprises (KE) for handling wheat cargo. Services provided by KE were exempt from service tax as they were in relation to agriculture. FCI paid service tax by mistake which was not deposited by KE to the Government.

Department issued a notice against KE for recovery of service tax collected by KE from FCI. It also issued notice for recovery of amount due against FCI.

The Gujarat High Court held that - FCI did not have service tax liability on cargo handling service. FCI, having already paid such sum to KE, had no further liability to deposit with the Government, when no service tax was payable by it on such service.

3. Prize money paid for good performance isn't liable to service tax

Assessee was registered as a service provider under the category of 'site formation and clearance and evacuation services.

One service recipient provided specific quantities of explosives and diesel oils for providing services.

If assessee used specific quantities of explosives and diesels below agreed quantity, it would be paid bonus/incentive by the recipient.

Revenue argued that explosives and diesel oils provided free of cost and amount of incentives form part of assessable value of services.

The CESTAT held that - cost of free items supplied by recipient would not be added to assessable value of services. Therefore, the value of diesel and explosives would not be added in value of services and hence will not be liable to tax.

C. COMPANIES ACT

1. Director's can attend board meeting via video conferencing without intimating at the beginning of the calendar year

Applicant and his mother were directors of the company. They wanted to attend the board meeting through video conferencing as they were going outside India. They requested to participate in the meeting through electronic mode.

As per the Act, any director who wishes to participate through video conferencing must express his intention at the beginning of the calendar year.

The Joint Managing Director denied permission for participating in Board meeting stating that intimation shall be made at the beginning of the year.

The National Company Law Tribunal held that - if intimation is at the beginning of the calendar year,

such declaration will be valid for one calendar year. The Act does not state if intimation is not given, video conferencing will not be permitted. Therefore it does not mean if intimation is not given at the beginning of the calendar year, directors are not entitled to participate via video conferencing.

NOTE: The Judgements should not be followed without studying the complete facts of the case law.

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DUE DATES CHART FOR THE MONTH AUGUST 2016 (VARIOUS ACTS):

August 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5 Service Tax Payments by Companies	6 Service Tax Payments by Companies (if paid electronically) Excise Duty Payment
7 Income Tax – TDS payment	8	9	10 Monthly Excise Return (ER- 1)/ ER-2 monthly return by 100% EOU, Quarterly Excise Return by EOU, SSI Units and paying 2% in Form ER-8	11	12	13
14	15 Provident fund payment	16	17	18	19	20
21 MVAT Payment, ESIC Payment, Payment and filing of quarterly/ monthly MVAT Return	22	23	24	25	26	27
28	29	30 Profession Tax Payment	31			

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This communication is intended to provide general information, guidance on various professional subject matters and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.

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